IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.8715 OF 2006

M.R. Patwardhan
HUF through its Karta
Shri Ashok Madhav Patwardhan .....Petitioner.

V/s

Shri Ketan Rohit Sheth and Ors. .....Respondents.

Mr. Tejesh Dande for the Petitioner.

CORAM: A. S. OKA, J.

DATE : 15th February, 2007

P.C:

1. By this writ petition under Article 227 of the Constitution of India, the Petitioner - original Plaintiff has taken exception to the order dated 15/09/2006 passed by the trial court on an application for amendment of plaint which was essentially filed for impleading the Bank as a party-defendant. The said application has been rejected by the trial court by holding that the Bank is neither a necessary nor a proper party to the suit.

2. The Petitioner - Plaintiff claims leasehold rights in

respect of the property which is a subject matter of the suit on the basis of a registered sale deed executed by Shri Mohan V. Joshi and others. According to the case of the Petitioner, the Petitioner agreed to assign leasehold rights in respect of the suit premises in favour of defendants in the suit for consideration of Rs 4,75,000/-. Accordingly, an agreement was executed by and between the parties and the same was duly registered. A cheque issued by the defendants in favour of the Petitioner towards the consideration amount was dishonoured. According to the Petitioner, the defendants mortgaged the suit property in favour of Rupee Co-operative Bank Ltd. and obtained loan.

3. The substantive prayer in the suit is for recovery of balance consideration from the defendants together with interest. In the alternative, the prayer is made for handing over vacant possession of the suit premises.

4. The contention of the learned advocate for the Petitioner is that the said Bank sold the suit property for recovery of the dues payable by the defendants in favour of

third party by auction and, as of today, the auction purchaser is in possession. The submission is that, in case, the Petitioner desires to press relief which is prayed for in the alternative, the said Bank will be necessary and property party.

5. I have considered the submissions. So far as substantive prayer is concerned, by no stretch of imagination the said Bank can be a necessary or a proper party. So far as the prayer for alternative relief is concerned, going by the case made out by the Petitioner, as of today, the said Bank cannot claim any right, title, interest in the suit property as, even according to the Petitioner, the said property has been sold in auction held at the instance of the Bank and, as of today, the auction purchaser is in possession. Even according to the Petitioner, the Bank has received full consideration from the auction purchaser. Therefore, even for considering the relief prayed in the alternative, the Bank is obviously not either a necessary or a proper party. Hence, view taken by the trial Court appears to be correct.

6. No case is made out for interference in this Petition. Petition is rejected.

(A.S. OKA, J.)